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**UNITED STATES DISTRICT COURT**

**DISTRICT OF OREGON**

Portland Division

BENNETT IRBY,

Plaintiff,

v.

STATE FARM MUTUAL AUTOMOBILE  
INSURANCE COMPANY, a corporation,

Defendant.

Case No. 3:22-CV00773-SI

**JOINT PROPOSED CASE  
MANAGEMENT SCHEDULE**

The Court ordered (ECF 21) the parties to confer and submit a joint proposed case management schedule. The parties have conferred and, as explained below, do not agree as to the next steps this Court should take.

As a preliminary matter, the parties *do* agree that the initial disclosures and discovery planning requirements set forth in Federal Rule of Civil Procedure 26 should be postponed until after the Court resolves Plaintiffs' contemplated Motion to Certify Questions of Law to the Oregon Supreme Court and, if one or more questions are ultimately certified to that court, until after the Oregon Supreme Court responds to the certified question(s). If certification does not occur, then discovery likely will not be necessary at all. This proposal is, therefore, the most efficient way forward in this case.

That said, Defendant does not agree that certification is appropriate, nor even available under the circumstances present in this case. Specifically, Plaintiff, in the Stipulated Motion to Abate this matter, agreed as follows:

This same or similar legal dispute is also at issue in two other cases in the United States District Court for the District of Oregon involving the same attorneys. Those cases are:

- *Melody J. Spear v. State Farm Mut. Auto. Ins. Co.*, Case No. 6:22-cv-0113-MK; and
- *Richard Burright v. State Farm Mut. Auto. Ins. Co.*, Case No. 3:22-cv-00667-MK.

(ECF 6). The District Court in *Spear*, following the Ninth Circuit's decision, declined to certify the exact question posed here because the Ninth Circuit had already denied the parties' joint motion for certification as moot. *Spear v. State Farm Mut. Auto. Ins. Co.*, No. 23-35356, 2024 WL 4589079, at \*2 (9th Cir. Oct. 28, 2024). Defendant's position is the only remaining matter is for a proposed judgment, in its favor, to be submitted consistent with *Spear*. Plaintiff's position is that the Ninth Circuit's mootness determination in *Spear* does not apply to this case, and Plaintiff is prepared to brief the issue if necessary.

If the Court were inclined to allow Plaintiff to file a Motion to Certify, Defendant would agree to the following briefing schedule.:

- **March 7, 2025:** Plaintiff files motion to certify question(s) of law to the Oregon Supreme Court.
- **March 28, 2025:** Defendant files response to Plaintiffs' motion to certify.
- **April 4, 2025:** Plaintiff files reply in support of motion.

Respectfully submitted on: February 4, 2025.

/s/ Jesse A. Buss

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